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A TALE OF TWO STATUTES: TWENTY YEAR
JUDICIAL INTERPRETATION OF THE CITIZEN SUIT
PROVISION IN THE CONNECTICUT
ENVIRONMENTAL PROTECTION ACT AND THE
MINNESOTA ENVIRONMENTAL RIGHTS ACT

*Andrew J. Piela**

I. INTRODUCTION

The era from the late 1960s through the 1970s was a watershed in the field of environmental law. Throughout the United States, there emerged a growing public concern over the preservation of our environment; a wave fueled on by the disasters at Love Canal in New York¹ and the Valley of the Drums in Tennessee.²

As Congress labored in Washington to pass legislation on a national scale, equally important pieces of legislation were being discussed in several state capitals. Professor Joseph Sax, one of the leading writers in the area of environmental law, argued for the creation of statutes at the state level that would allow concerned private citizens to activate the power of the judiciary to protect their state's natural resources.³ Sax argued that a private citizen, empowered by this legislation, could be an effective defender of the environment.⁴ In 1969, Michigan adopted Professor Sax's Model Environmental Protection Act.⁵ The Michigan Environmental Protection Act (MEPA) be-

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¹ Richard Roth, *Long Buried Poisons Ooze Out of the Ground*, WASH. POST, Aug. 5, 1978, at A2.

² Bill Richards, *Oozing Earth*, WASH. POST, Aug. 4, 1978, at C1.

³ JOSEPH SAX, DEFENDING THE ENVIRONMENT: A STRATEGY FOR CITIZEN ACTION, 247-52 (1971).

⁴ *Id.* at 56.

⁵ Michigan Environmental Protection Act, MICH. COMP. LAWS ANN. §§ 691.1201-.1207 (West 1977) [hereinafter MEPA].

came the model for at least six other states.⁶ The states' judiciaries, however, have molded MEPA and its progeny, and it is the individual interpretation of the reach and limitations of each act that has determined each act's ultimate effectiveness.

This Comment examines how the state courts have interpreted the citizen suit provisions in two acts derived from MEPA, the Connecticut Environmental Protection Act of 1971 (CEPA),⁷ and the Minnesota Environmental Rights Act (MERA).⁸ Section II of this Comment discusses the historical background of both acts and the effectiveness of the common law in both Connecticut and Minnesota in providing remedies for environmental plaintiffs. Section III examines how the Connecticut state courts have addressed the issues of standing, burdens of proof, and the remedies that are provided by CEPA. Section IV examines how the Minnesota state courts have dealt with these same issues under MERA. Section V analyzes the findings in Sections III and IV and discuss how these two acts, both generally similar in their language and goals, could have such a radically different effect.

II. COMMON LAW AND STATUTORY HISTORICAL BACKGROUND OF CEPA AND MERA

Historically, environmental plaintiffs have turned to the common law to recover damages.⁹ The most popular cause of action for plaintiffs in environmental litigation is a variant of nuisance.¹⁰ Both private nuisance¹¹ and public nuisance¹² actions are used by plaintiffs to enjoin polluters and to collect damages for their injuries.¹³

The common law, however, is an imperfect remedy at best. The

⁶ CONN. GEN. STAT. ANN. §§ 22a-14-21 (West 1985); FLA. STAT. ANN. § 403.412 (West 1986); IND. CODE ANN. §§ 13-6-1-1-6 (Burns 1987); MINN. STAT. ANN. §§ 116B.01-.13 (West 1987); N.J. STAT. ANN. §§ 2A:35A-13-15 (West 1987); S.D. CODIFIED LAWS §§ 34A-10A-1-15 (1986).

⁷ CONN. GEN. STAT. ANN. §§ 22a-14-21 (West 1985).

⁸ MINN. STAT. ANN. §§ 116B.01-.13 (West 1987).

⁹ See generally, David P. Bryden, *Environmental Rights in Theory and Practice*, 62 MINN. L. REV. 163, 166 (1977).

¹⁰ See RESTATEMENT (SECOND) OF TORTS § 821 A-F (1977).

¹¹ See § 821D (defining private nuisance as non-trespassory invasion of another's interest in private use and enjoyment of land).

¹² See § 821B(1) (defining public nuisance as unreasonable interference with a right common to the general public).

¹³ *Highview North Apartments v. County of Ramsey*, 323 N.W.2d 65, 73 (Minn. 1982) (municipality liable for damages under nuisance statute where installation of its water drainage system caused damage to plaintiff's basement); *Filsko v. Bridgeport Hydraulic Co.*, 404 A.2d 889, 890-92 (Conn. 1978); *Dingwell v. Town of Litchfield*, 496 A.2d 213, 215-16 (Conn. App. 1985) (plaintiff successful in nuisance action against town when pollutants from town landfill destroy plaintiff's well).

many procedural and substantive barriers have made recovery very difficult for plaintiffs who sue to protect natural resources,¹⁴ particularly in Connecticut and Minnesota. Specifically, many private citizens who bring suit in these states lose because they are unable to satisfy standing requirements.¹⁵ In common-law nuisance, a plaintiff has standing to sue if that plaintiff can show that the defendant's action has caused or will cause that plaintiff direct damage or injury.¹⁶ For example, in *Herrmann v. Larson*,¹⁷ the plaintiff was able to recover damages under common-law nuisance by showing that the defendant's wastes directly entered and damaged his property.¹⁸

In contrast, when private citizens sue to protect the environment as a whole without a showing of direct injury to themselves, the state courts generally have dismissed the cases.¹⁹ For example, in *Hiland v. Ives*,²⁰ a Connecticut Superior Court stated that there is an aversion to allowing the private citizen to take on the role of attorney general

¹⁴ See *Hill v. Stokely-Van Camp, Inc.*, 109 N.W.2d 749, 753-56 (Minn. 1961) (plaintiff cannot rely upon the fact that other people succeeded in a nuisance action against a canning factory, plaintiff must show how the factory activities constituted a nuisance against him, specifically); Note, *Protection of Scenic and Aesthetic Resources Under the Minnesota Environmental Rights Act*, 17 WM. MITCHELL L. REV. 1190, 1195 (1990) [hereinafter *Scenic and Aesthetic Resources*] (author cites strict standing requirements required for environmental plaintiffs as well as high levels of judicial deference shown by state courts toward state and federal defendants).

¹⁵ See, e.g., *Nicholson v. Conn. Half-Way House*, 218 A.2d 383, 385-86 (Conn. 1966) (plaintiffs unsuccessful in an effort to enjoin operation of half-way house because they were unable to show how their property would be unreasonably affected by its operation); *Jack v. Torrant*, 71 A.2d 705, 708-11 (Conn. 1950) (plaintiff unsuccessful in an effort to enjoin the operation of funeral home as he is able to show that its operation would pose real and substantial damage to his property); MINN. STAT. ANN. § 561.01 (West 1988) (statute which codifies common law nuisance requires plaintiffs to prove that their property is injuriously affected or the enjoyment of *their* land is lessened).

¹⁶ *Herrmann v. Larson*, 7 N.W.2d 330, 333 (Minn. 1943) (plaintiff established nuisance by showing waste water from defendant's dairy entered onto and damaged his land); *Batcher v. City of Staples*, 120 Minn. 86 (1912) (cause of action established when plaintiff showed that defendant's sewage polluted a stream running near his property); *Filsko v. Bridgeport Hydraulic Co.*, 404 A.2d 889, 890-92 (Conn. 1978) (plaintiff proves nuisance claim with evidence showing that his property was damaged by chemicals oozing from the defendant's land); *Dingwell v. Town of Litchfield*, 496 A.2d 213, 215-16 (Conn. App. Ct. 1985) (plaintiff proves nuisance claim with evidence showing chemicals from defendant's landfill leached into the groundwater and destroyed plaintiff's well).

¹⁷ 7 N.W.2d at 330.

¹⁸ *Id.* at 333.

¹⁹ *Hiland v. Ives*, 257 A.2d 822, 824 (Conn. Super. Ct. 1966); *Crocker v. Higgins*, 7 Conn. 342, 346 (1825) (court concludes that the plaintiff must have more than passing interest or partial feeling to establish standing, there needs to be a real and substantial injury or interest); see MINN. STAT. ANN. § 561.01 (West 1988) (plaintiff must show injury to their property to bring suit under statutory nuisance).

²⁰ 257 A.2d 822 (Conn. Super. Ct. 1966).

and sue to protect the environment without a showing of direct injury.²¹

Even if a plaintiff is able to show sufficient harm for standing and satisfy the elements of a nuisance cause of action, remedies, especially injunctive relief, have still proven extremely difficult to obtain.²² The Connecticut courts will enjoin a defendant's activities only with extreme caution and award an injunction only in the case of an irreparable injury where there is no adequate remedy at law for the plaintiff.²³ Furthermore, in order to avoid embarrassment to the government, the Connecticut courts have shown a reluctance to enjoin harmful governmental activities, generally showing a great deference to governmental decision-making processes.²⁴ In addition, governmental immunity statutes have made bringing suit against the state or a political subdivision of the state extremely difficult.²⁵ Finally, in Minnesota, the Minnesota Supreme Court has, in some cases, allowed defendants to continue their harmful activities, determining that the defendants have acquired a prescriptive easement to pollute.²⁶

It is important to note that while the common law was the major source of remedies for environmental plaintiffs, it was not the exclusive source in 19th century Connecticut. In 1868, the Connecticut legislature, in a move designed to protect and encourage the fishing industry, passed an act which allowed private citizens to bring *qui tam* actions against any person, partnership, or corporation that caused the release of pollution which was deleterious to clams, oysters, eels, or fish.²⁷

²¹ Hilland, 257 A.2d at 824 (Superior Court stated that it might be overrun by self-appointed protectors of the public interest).

²² Jedneak v. Minneapolis General Electric Co., 4 N.W.2d 326, 329 (Minn. 1942) (plaintiffs unable to enjoin operation of power plant which deposited soot and ashes on their property because operation of that power plant was reasonable for its location and design). *But see*, Brede v. Minnesota Crushed Stone, 173 N.W. 805, 807-08 (Minn. 1919) (plaintiff landowners able to enjoin operation of quarry even though nuisance effects could not be controlled and quarry was operating in an area appropriate for quarrying).

²³ Nicholson v. Conn. Half-Way House, 218 A.2d 383, 386 (Conn. 1966) ("Restraining the action of an individual or corporation is an extraordinary action, always to be exercised with caution, never without the most satisfying of reasons." (citing Goodwin v. New York, 43 Conn. 494, 500 (1876))).

²⁴ Connecticut Employees Union, Independent v. Connecticut State Employees Union, 439 A.2d 321, 328 (Conn. 1981); Wood v. Town of Wilton, 240 A.2d 904, 907 (Conn. 1968) (Connecticut Supreme Court unwilling to enjoin construction of town dump until dump develops into nuisance).

²⁵ See CONN. GEN. STAT. ANN. § 52-577n (West 1985); MINN. STAT. ANN. § 540.13 (West 1987).

²⁶ See Herrmann v. Larson, 7 N.W.2d 330, 333 (Minn. 1943).

²⁷ The Act of 1868 as amended by the Act of 1872 [hereinafter the Act of 1868 as amended]. (The text of this act is taken from Blydenburgh v. Miles, 39 Conn. 484, 486 (1872)). The Act of 1868 reads:

The Act of 1868 is unique in several respects. First, the Connecticut legislature apparently attempted to give private citizens, regardless of any personal injury, a chance to sue the polluter to protect the state fisheries.²⁸ The Act of 1868 even gave plaintiffs an incentive to use the Act by rewarding successful plaintiffs with a payment equal to half of the penalty imposed upon the polluter.²⁹ Despite the broad language of the Act, however, the Connecticut Supreme Court still held to the traditional common law notions of standing which required a showing of direct injury on the part of the plaintiff before suit under the Act could be commenced.³⁰

The Act of 1868 established a cause of action that was considerably easier to prove than the tort of common-law nuisance. Instead of requiring the plaintiff to prove that the defendant's actions were an unreasonable or unlawful interference with a property of the plaintiff, the Act of 1868 spelled out three elements that the plaintiff had to prove.³¹ First, the defendant must be an individual or corporation that is engaged in one of the industries enumerated in the Act.³² Second, the defendant must have permitted or allowed the substances in question to enter the waters of the state.³³ Finally, the substance that was released must be deleterious to fish, clams, oysters, or eels.³⁴ The

Every person, partnership or corporation that shall permit or allow any coal, tar, or refuse from the manufacture of gas, or refuse from establishments operated to extract oil from white-fish, or other deleterious substances to clam, oysters, eels and fish, to run, flow, drain or be placed in any of the harbors, rivers, creeks, arms of the sea, or waters adjacent to this state, shall forfeit the sum of one hundred dollars, one half to him who shall prosecute to effect, and one half to the treasury of the town within which the offense is committed.

The Act of 1872 reads:

... [A]n act in addition to an act for encouraging and regulating fisheries, shall apply to any person, persons, or corporation carrying on the business of manufacturing oil or manure from fish or from bones or the carcasses of animals, or of manufacturing mineral phosphates or artificial manures; and it shall be deemed in violation of said act to permit or allow any of the liquids or materials used or produced in said establishments or businesses, to run, flow, or drain into or be placed in any of the harbors, rivers, creeks, arms of the sea, or any waters adjacent to this state; and the forfeiture or penalty provided by said act may be recovered for each and every day that said act is violated; and any person may sue for, in his own name, and collect said forfeiture or penalty in a proper action on this statute.

See also Levi Sikorsky, *A Special Note of Environmental Interest: A Century Old Lesson in Ecological Legislation*, 45 CONN. B.J. 313 (1971).

²⁸ See the Act of 1868 as amended.

²⁹ The Act of 1868 as amended.

³⁰ *Stow v. Miles*, 39 Conn. 426, 427 (1872) (Connecticut Supreme Court denied right of plaintiff to recover under Act of 1868 without first alleging some sort of personal aggrievement).

³¹ See the Act of 1868 as amended.

³² The Act of 1868 as amended.

³³ The Act of 1868 as amended.

³⁴ The Act of 1868 as amended.

Connecticut Supreme Court, while finding the wording of the requirements ambiguous at best, nevertheless upheld the Act of 1868 in the face of a constitutional takings challenge.³⁵ The Act of 1868, however, went substantially unused and was eventually repealed in 1901.³⁶

III. THE CONNECTICUT STATE COURTS' INTERPRETATION OF CEPA

A. Standing in a Private Suit Brought under CEPA

CEPA was designed to grant automatic statutory standing³⁷ to plaintiffs who sought to protect natural resources from unreasonable pollution caused by any private person, corporation, association, or public entity.³⁸ By enacting CEPA, the Connecticut legislature intended to broaden the traditional notions of standing to include all private plaintiffs regardless of whether they suffered a direct injury or had a personal economic interest in the litigation.³⁹ State Representative John Papandrea specifically emphasized this point in the 1971 House debates.⁴⁰ Both houses of the Connecticut General Assembly were aware that, without a broad grant of standing in CEPA, CEPA would be relatively useless because few plaintiffs could allege the necessary direct injury to satisfy the common law notions of standing.⁴¹

³⁵ See *Blydenburgh v. Miles*, 39 Conn. 484, 494 (1872).

³⁶ See Sikorsky, *supra* note 27.

³⁷ The legal right of a person or group to challenge in a judicial forum the conduct of another. BARRON'S LAW DICTIONARY 461 (3d ed. 1991). In this case, the right is granted specifically by CEPA. CONN. GEN. STAT. ANN. § 22a-16 (West 1985).

³⁸ CONN. GEN. STAT. ANN. § 22a-16 (West 1985):

The attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the superior court for the judicial district wherein the defendant is located, resides or conducts business, except that where the state is the defendant, such action shall be brought in the judicial district of Hartford-New Britain, for declaratory and equitable relief against the state, any political subdivision thereof, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity, acting alone, or in combination with others, for the protection of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction.

³⁹ See Haynes N. Johnson, *The Environmental Protection Act of 1971*, 46 CONN. B.J. 422, 428 (1972).

⁴⁰ "... it [the Act] expands the right of a person to have access to the courts when property which we might say belongs to all of the public is jeopardized by alleged polluting activity." House transcript, March 16, 1971, at 739.

⁴¹ Senator Eddy stated: "... What we are attempting to do here is beginning in our own way to let the citizens say they have a stake, the right to live in clean air, clean water, and a generally

Despite these relatively clear statements by the Connecticut legislature, Connecticut courts did not surrender the common law concept of standing that required some sort of direct injury or interest before the plaintiff could seek redress.⁴² Although in 1974, the Connecticut Supreme Court first determined in *Greenwich v. Connecticut Transit Authority*⁴³ that CEPA did provide plaintiffs with the statutory standing necessary to sue to protect the public trust⁴⁴ from unreasonable pollution,⁴⁵ the Connecticut courts did not seem to adhere to this notion for long. After *Greenwich* the Connecticut Supreme Court seemed unable to formulate a definite interpretation of how far CEPA's grant of standing extended, or even if it existed at all.⁴⁶ In 1975, the court in *Belford v. City of New Haven*, refused to grant a group of private citizens standing under CEPA to sue the City of New Haven to enjoin the construction of an Olympic rowing course on land allocated as park land.⁴⁷ The court stated that the plaintiffs had failed to allege that the diversion of the park land and the threatened destruction of the public lands caused direct injury to the public trust,⁴⁸ or would cause the plaintiffs substantial damage that was distinct from that sustained by the public.⁴⁹ In 1978, the court seemed to reaffirm the *Belford* decision by stating that plaintiffs who attempted to intervene in and appeal an agency decision by invoking CEPA still must allege an injury or a threatened injury specific to themselves.⁵⁰ Finally, in *Mystic Marine Life Aquarium v. Gill*,⁵¹ several plaintiffs, including private citizens, property owners associations, and a public aquarium, attempted to appeal an administrative decision which allowed the defendants to construct an off-shore dock

favorable environment." Senate transcript, April 15, 1971 at 1084; see *supra* note 15 and accompanying text.

⁴² See, e.g., *Wexlar Constr. Co. v. Housing Auth. of the Town of Norwich*, 183 A.2d 262, 264 (Conn. 1962).

⁴³ 348 A.2d 596, 600 (Conn. 1974).

⁴⁴ The public trust doctrine states that the state holds certain lands in trust for the benefit and enjoyment of the people of that state. BARRON'S LAW DICTIONARY 384 (3d ed. 1991). CEPA specifically mentions the air and water as the resources within the definition of the public trust. CONN. GEN. STAT. ANN. § 22a-16 (West 1985).

⁴⁵ *Greenwich v. Connecticut Transport Authority*, 348 A.2d 596, 599 (Conn. 1974) ("We are of the opinion, however, that § 22a-16 is an example of a legislative enactment of what has been described as the expanding doctrine of private attorney generals who are empowered to institute proceedings to vindicate the public trust.").

⁴⁶ See Note, *CEPA Update*, 14 CONN. L. REV. 695, 699 (1982) [hereinafter *CEPA Update*].

⁴⁷ 364 A.2d 194, 196-98 (Conn. 1975).

⁴⁸ See *Belford*, 364 A.2d at 196-98.

⁴⁹ *Id.* (proposed course did not threaten the plaintiffs with any substantial damage distinct from that sustained in common by the public generally, and special and peculiar to themselves).

⁵⁰ *Mystic Marine Life Aquarium, Inc. v. Gill*, 400 A.2d 726, 729-31 (Conn. 1978).

⁵¹ 400 A.2d 726 (Conn. 1978).

in the Mystic River.⁵² In *Mystic*, the Connecticut Supreme Court stated that while the plaintiff, Mystic Aquarium, had statutory standing to sue under CEPA because it participated in the original administrative action,⁵³ the other plaintiffs lacked the personal aggrievement necessary to appeal the administrative decision.⁵⁴

This confusion on the part of the Connecticut Supreme Court caused the United States District Court for the District of Connecticut in *Housatonic River v. General Electric*,⁵⁵ to invoke the doctrine of abstention⁵⁶ rather than attempt to determine whether the plaintiffs in *Housatonic* had standing to sue under CEPA.⁵⁷

There are several possible reasons for the confusion over the issue of standing in Connecticut. First, it is important to note that *Mystic* was not a private suit under CEPA, but rather an appeal from an administrative decision in which the plaintiffs attempted to invoke CEPA's goal of protecting the public trust from unreasonable pollution.⁵⁸ The Connecticut Supreme Court was primarily concerned with the standing necessary for a citizen to appeal an administrative decision and not necessarily with the standing that a private citizen would need to bring an independent private suit under CEPA.⁵⁹ In attempting to determine the standing requirement necessary to appeal an administrative decision, the Connecticut Supreme Court stated that, while Connecticut courts were not bound to follow federal precedent,⁶⁰ they would take note of the restrictions on injury that the United States Supreme Court laid down in *Sierra Club v. Morton*.⁶¹ In *Morton*, the United States Supreme Court was unwilling to abandon the idea that a party seeking review must have suffered some manner of personal injury and have a direct stake in the resolution of the controversy before filing suit.⁶² Therefore, because the plaintiffs in *Mystic*, who were not part of the original administrative action, could

⁵² *Mystic*, 400 A.2d at 727-29 (besides the aquarium, other plaintiffs included a cemetery overlooking the Mystic River, a property owners association who feared that the off-shore barge might hamper their future use of the river and other local property owners who use the river for skating and sailing). These plaintiffs were not part of the original administrative action and attempted to appeal the administrative decision to the Superior Court. *Id.* at 727.

⁵³ *Id.* at 729.

⁵⁴ *Id.*

⁵⁵ 462 F. Supp. 710 (D. Conn. 1978).

⁵⁶ A policy adopted by the federal courts where the federal court declines to exercise jurisdiction until state law issues are resolved. BARRON'S LAW DICTIONARY 2 (3d ed. 1991).

⁵⁷ 462 F. Supp. at 714.

⁵⁸ *Mystic Marine Life Aquarium, Inc.*, 400 A.2d at 729.

⁵⁹ *Id.* at 729-30.

⁶⁰ *Id.* at 731.

⁶¹ 405 U.S. 727 (1971).

⁶² *Morton*, 405 U.S. at 738.

show no evidence that the completion of the off-shore dock would inflict direct injury on their property, the Connecticut Supreme Court held that they lacked the necessary personal aggrievement to appeal the administrative decision.⁶³

The second possible explanation for the confusion concerning standing is that the Connecticut Supreme Court in *Mystic* was influenced by the United States Supreme Court decision in *Data Processing Services v. Camp*⁶⁴ which constructed a two-pronged test to determine whether the plaintiff had standing to sue.⁶⁵ Applying this test, the Connecticut Supreme Court determined in *Mystic*, that a plaintiff must show a specific, personal, and legal interest in the subject matter of the decision as distinguished from the general public's interest, and that this interest is specifically and injuriously affected.⁶⁶ In *Mystic*, the Connecticut Supreme Court determined that the plaintiffs had no specific personal injury under this test and therefore, could not appeal the decision.⁶⁷

These confusing decisions in *Belford* and *Mystic* provoked considerable alarm and caused one scholar to comment that these decisions threatened to eviscerate the intent and effectiveness of CEPA.⁶⁸

In 1981, the Connecticut Supreme Court, providing little explanation, reversed its earlier narrow interpretation of standing under CEPA.⁶⁹ In *Manchester Environmental Coalition v. Stockton*,⁷⁰ the Connecticut Supreme Court determined that standing to sue under CEPA is automatically given to "any person" regardless of whether the plaintiffs who bring the suit have suffered direct harm or injury.⁷¹ *Manchester Environmental Coalition* involved a group of private citizens who brought suit under CEPA to halt construction of a J.C. Penney warehouse.⁷² The Connecticut Supreme Court, in an about-face, held that the purpose of CEPA was remedial in nature, and therefore, the language of the statute must be liberally construed so that CEPA can best accomplish its intended goal.⁷³ Outside of this single sentence, the Connecticut Supreme Court made no attempt to

⁶³ 400 A.2d at 728-29.

⁶⁴ *Data Processing Services v. Camp*, 397 U.S. 150 (1970).

⁶⁵ *Data Processing Services*, 397 U.S. at 152-53.

⁶⁶ *Mystic*, 400 A.2d at 731.

⁶⁷ *Id.* at 730-32.

⁶⁸ Peter A. Kelly, *Belford v. New Haven: Erosion of the Private Plaintiff's Standing under the Environmental Protection Act*, 50 CONN. B.J. 411, 421-23 (1976).

⁶⁹ *Manchester Env'tl. Coalition v. Stockton*, 441 A.2d 68, 73-75 (Conn. 1981).

⁷⁰ 441 A.2d 68 (Conn. 1981).

⁷¹ *Manchester Env'tl. Coalition*, 441 A.2d at 73-74.

⁷² *Id.* at 71-72.

⁷³ *Id.* at 73-74.

explain the rationale behind its decision to explicitly overturn *Belford*.⁷⁴

In the post-*Manchester Environmental Coalition* era, the Connecticut state courts have continued with this "liberal" definition of standing, requiring only that the plaintiff allege that the defendant's actions threaten the environment with unreasonable pollution.⁷⁵ Under this rationale, the Connecticut state courts have granted standing to a variety of plaintiffs, including municipalities,⁷⁶ public officials,⁷⁷ and groups of concerned citizens.⁷⁸ Currently, the Connecticut courts automatically grant standing to sue under CEPA, regardless of whether the plaintiff has suffered direct physical or economic injury.⁷⁹

B. The Plaintiff's Burden of Proof in a Private Suit Brought under CEPA

While issues of standing under CEPA were essentially resolved in *Manchester Environmental Coalition v. Stockton*,⁸⁰ any plaintiff who sues under CEPA still carries the ultimate burden of proof.⁸¹ In order to prevail in a citizen suit under CEPA, the plaintiff must carry the statutory burden of proof by making a prima facie case showing that the defendant's actions, either alone or in combination with others, is causing or will cause unreasonable pollution, impairment, or destruction of the public trust in the state's air, water, or other natural resources.⁸²

In *Manchester Environmental Coalition*, the Connecticut Supreme Court relied heavily upon the Supreme Court of Minnesota's decision in *County of Freeborn by Tuveson v. Bryson*,⁸³ when the Connecticut Supreme Court adopted a similar two-part test to determine whether the plaintiff has made out a prima facie case under CEPA.⁸⁴ The Connecticut Supreme Court stated that the plaintiff must show a

⁷⁴ *Id.*

⁷⁵ Note, *supra* note 46, at 705.

⁷⁶ *Middletown v. Hartford Electric Light Co.*, 473 A.2d 787, 790 (Conn. 1984) (Court found that the city had standing only under the private cause of action under CEPA).

⁷⁷ *Keeney v. L & S Constr.*, No. 91-702160, 1992 WL 4487, at *1 (Conn. Super. Jan. 6, 1992) (Commissioner of the Department of Environmental Protection has standing to sue under Section 22a-16).

⁷⁸ *Lake Williams Beach Assoc. v. Gilman Bros. Co.*, 496 A.2d 182, 184-85 (Conn. 1985).

⁷⁹ *Manchester Env'tl. Coalition v. Stockton*, 441 A.2d 68, 73-74 (Conn. 1981).

⁸⁰ 441 A.2d at 74.

⁸¹ *Fromer v. Greenscape of Salem*, No. 50 19 77, 1991 WL 101043, at *7 (Conn. Super. May 28, 1991) ("the ultimate burden of proof [under § 22a-16] never shifts from the plaintiff.").

⁸² *Fromer*, 1991 WL 101043, at *7.

⁸³ 210 N.W.2d 290 (Minn. 1973), *rev'd on other grounds*, 243 N.W.2d 316 (Minn. 1976).

⁸⁴ *Manchester Env'tl. Coalition*, 441 A.2d at 73-75.

protectable natural resource and that the alleged activity threatens that resource with pollution, impairment, or destruction.⁸⁵

According to the test laid down in *Manchester Environmental Coalition*, the plaintiff must first prove that the resource they are protecting qualifies as a protectable natural resource under CEPA.⁸⁶ The statute itself provides little guidance as to what exactly a protectable natural resource is, mentioning only two by name: air and water.⁸⁷

In *Manchester Environmental Coalition*, the plaintiffs sued to protect the state's air from auto fumes that would be produced if a major construction operation was allowed to go forward.⁸⁸ The Connecticut Supreme Court stated that because air was specifically mentioned in CEPA, it was undoubtedly a protectable natural resource.⁸⁹ Additionally, both surface and subsurface water have been determined to be protectable natural resources as they are specifically mentioned in the language of CEPA.⁹⁰

Resources that are not part of these two general categories, may not be protected. The most notable example occurred in *Red Hill Coalition v. Town Planning and Zoning Commission*.⁹¹ In *Red Hill Coalition*, the plaintiffs attempted to protect a fifty acre lot of prime agricultural land from development.⁹² The Connecticut Supreme Court determined that, because CEPA does not specifically mention land as a protectable natural resource, the legislature did not intend for CEPA's protection to extend to agricultural land.⁹³ The Connecticut Supreme Court emphatically stated that it is not the province of the judiciary to supply what the legislature omitted.⁹⁴ In *Holly Hill Holdings v. Lowman*,⁹⁵ the Connecticut Appeals Court, following this logic, held that CEPA did not create a cause of action for private plaintiffs to sue for damage caused by leaking underground storage tanks because the legislature, in drafting CEPA, did not specifically address the matter.⁹⁶

Once a plaintiff has shown that the resource in question is protected

⁸⁵ *Id.* at 73.

⁸⁶ *Id.*

⁸⁷ CONN. GEN. STAT ANN. § 22a-16 (West 1985).

⁸⁸ 441 A.2d at 73.

⁸⁹ *Id.*; see also *Middletown v. Hartford Elec. Light Co.*, 473 A.2d 787, 792 (Conn. 1984).

⁹⁰ *Keeny v. L & S Constr.*, No. 91-702160, 1992 WL 4487, at *1-*2 (Conn. Super. Jan. 6, 1992).

⁹¹ 563 A.2d 1339 (Conn. 1989), *aff'd*, 563 A.2d 1347 (Conn. 1989).

⁹² 563 A.2d at 1348-49.

⁹³ *Id.* at 1350-52.

⁹⁴ *Id.*

⁹⁵ 619 A.2d 853 (Conn. App. Ct. 1993).

⁹⁶ 619 A.2d at 861.

under CEPA, the next hurdle is to show that the resource is being threatened by unreasonable pollution.⁹⁷ The *Manchester Environmental Coalition* decision clearly states that a plaintiff must show unreasonable pollution before the second element of the statutory test is satisfied.⁹⁸

As mentioned above,⁹⁹ the Connecticut courts have followed the legislative history of CEPA interpreting the word "unreasonable" in such a way as to limit the number of claims brought.¹⁰⁰ When interpreting CEPA, the United States District Court for the District of Connecticut acknowledged that the term "unreasonable" is standardless and its true meaning must be developed through active courtroom interchange.¹⁰¹ Very few cases have survived the courtroom interpretation of the term.¹⁰² *Keeney v. L. & S. Construction*,¹⁰³ is an example of one case that did survive. In *Keeney*¹⁰⁴ the plaintiff made out a prima facie case when he presented videotape evidence proving that the defendant had dumped large amounts of construction waste and hazardous waste in several housing developments.¹⁰⁵ The *Keeney* case is unique because the plaintiff, who was the Commissioner of the State Department of Environmental Protection, had videotape evidence of the illegal dumping.¹⁰⁶

In the overwhelming majority of cases, the Connecticut courts have determined, unlike the trial court in the *Keeney* case, that the activities in question have not risen to the level of unreasonable pollution of the natural resources.¹⁰⁷ For example, in *Lake Williams Beach Assoc. v. Gilman Brothers*,¹⁰⁸ the Connecticut Supreme Court deter-

⁹⁷ CONN. GEN. STAT. ANN. § 22a-16 (West 1987).

⁹⁸ *Manchester Env'tl. Coalition v. Stockton*, 441 A.2d 68, 73 (Conn. 1981); see also *Fromer v. Greenscape of Salem*, No. 51 19 77, 1991 WL 101043, at *7 (Conn. Super. May 28, 1991) (plaintiff must show that the defendant's pollution is unreasonable).

⁹⁹ *Manchester Env'tl. Coalition v. Stockton*, 441 A.2d at 73; see also *Fromer*, 1991 WL 101043, at *7. See *supra* text accompanying note 98.

¹⁰⁰ See *Fromer v. Lombardi*, No. CV91-518691, 1992 WL 231185, at *4 (Conn. Super. Sept. 14, 1992) (not all pollution is unreasonable and only that which is unreasonable will not be authorized).

¹⁰¹ *Housatonic River v. General Elec. Co.*, 462 F. Supp. 710, 715, n.10 (D. Conn. 1978).

¹⁰² See, e.g., *Lake Williams Beach Assoc. v. Gilman Bros.*, 496 A.2d 182, 185 (Conn. 1985) (lowering lake's depth by three feet does not constitute unreasonable pollution); *Middletown v. Hartford Elec. Light Co.*, 473 A.2d 787, 791-92 (Conn. 1984) (no injunction without evidence showing how burning oil laced with PCBs is unreasonable pollution).

¹⁰³ *Keeney v. L & S Constr.*, No. 91-702160, 1992 WL 4487, at *1 (Conn. Super. Jan. 6, 1992).

¹⁰⁴ *Keeney*, 1992 WL 4487, at *1.

¹⁰⁵ *Id.* at *1-*3.

¹⁰⁶ *Id.* at *1.

¹⁰⁷ *Id.* at *1-*3. See *supra* text accompanying notes 103-06.

¹⁰⁸ *Lake Williams Beach Assoc. v. Gilman Bros. Co.*, 496 A.2d 182, 185-86 (Conn. 1985).

mined that lowering of a lake's water level did not rise to the level of unreasonable pollution.¹⁰⁹

In order to show unreasonable pollution, the Connecticut courts have also required that the plaintiff document the alleged pollution with expert testimony or field studies.¹¹⁰ For example, in *Manchester Environmental Coalition*, the court required that the plaintiffs provide traffic studies and other expert testimony to prove their assertion that the defendant's construction project would cause unreasonable pollution to the air.¹¹¹ The need for expert or objective evidence to prove the second element of the statutory test is crucial if the plaintiff is attempting to enjoin an activity that is a prospective threat to the state's natural resources.¹¹²

C. Defenses Available in a Private Suit Brought under CEPA

After the plaintiff has established a prima facie case that the defendant's actions will cause or are causing unreasonable pollution, the defendant can, through the introduction of evidence, rebut the plaintiff's claim.¹¹³ Section 22a-17 of CEPA gives defendants two avenues by which to meet their burden of production and thus defeat the plaintiff's claim.¹¹⁴

The first defense allows defendants to introduce direct evidence showing that the pollution or threatened pollution does not or will not cause unreasonable pollution.¹¹⁵ For example, a defendant may introduce expert witness testimony, field studies, or other objective data

¹⁰⁹ Lake Williams Beach Assoc., 496 A.2d at 185.

¹¹⁰ Manchester Env'tl. Coalition v. Stockton, 441 A.2d 68, 73-75 (Conn. 1981).

¹¹¹ Manchester Env'tl. Coalition, 441 A.2d at 73-75.

¹¹² Middletown v. Hartford Elec. Light Co., 473 A.2d 787, 791-92 (Conn. 1984) (plaintiff unable to support contention that burning of mineral oil laced with PCBs would cause unreasonable pollution).

¹¹³ Samperi v. Inland Wetlands Agency, No. 14616, 1993 WL 279026, at *6 (Conn. July 27, 1993); Fromer v. Greenscape of Salem, No. 51 19 77, 1991 WL 101043, at *7 (Conn. Super. May 28, 1991).

¹¹⁴ CONN. GEN. STAT. ANN. § 22a-17(a) (West 1985) states:

When the plaintiff in any such action has made a prima facie showing that the conduct of the defendant, acting alone, or in combination with others, has, or is reasonably likely unreasonably to pollute, impair or destroy the public trust in the air, water or other natural resources of the state, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also prove, by way of an affirmative defense, that, considering all relevant surrounding circumstances and factors, there is no feasible and prudent alternative to the defendant's conduct and that such conduct is consistent with the reasonable requirements of the public health, safety and welfare.

¹¹⁵ CONN. GEN. STAT. ANN. § 22a-17(a) (West 1985) (the defendant may rebut the plaintiff's prima facie case by the submission of evidence to the contrary).

to rebut the plaintiff's claim of unreasonable pollution.¹¹⁶ The defendant also may prove that the plaintiff has failed to establish with convincing evidence that the defendant's pollution is unreasonable or threatens the state's natural resources.¹¹⁷ A discussion of this defense was also alluded to in the legislative history of CEPA.¹¹⁸ The Connecticut legislature was concerned that CEPA would be used as a harassment device rather than as a tool to protect the environment.¹¹⁹ Several legislators and their aides feared that passing the statute without any sort of limitation would allow plaintiffs to sue to enjoin any form of pollution, even breathing.¹²⁰

If the defendant is unable to rebut the plaintiff's evidence with contrary evidence, the second defense available under CEPA allows the defendant to plead an affirmative defense.¹²¹ The defendant may prove that, considering all of the relevant circumstances, there is no other feasible and prudent alternative to the conduct in question, and the defendant's conduct is consistent with the reasonable requirements of public health, safety, and welfare.¹²²

In addressing whether there is a feasible and prudent alternative, the Connecticut courts have used a definition formulated by the United States Supreme Court in *Citizens to Preserve Overton Park, Inc. v. Volpe*.¹²³ The Supreme Court determined that feasible alterna-

¹¹⁶ Fromer, 1991 WL 101043, at *7.

¹¹⁷ See *Middletown v. Hartford Elec. Light Co.*, 473 A.2d 787, 792 (Conn. 1984) (failure to show that burning mineral oil laced with PCBs will cause unreasonable pollution defeated plaintiff's suit).

¹¹⁸ Note, *supra* note 46.

¹¹⁹ Testimony of James Wade, attorney for the majority leadership of the House:

Now in framing this legislation, it was our judgment that all of us pollute the environment to one degree or another, simply by breathing. Obviously, we introduce elements into the environment which are not natural. And, therefore, if we are going to permit the use of the courts by citizens to bring lawsuits against those who do pollute the environment, we believe there must be a check to prevent those suits which are brought simply for harassment, and for no other purpose.

Environmental Committee Transcript, Feb. 18, 1971, at 162.

¹²⁰ Testimony of Representative Ciampi:

I want to emphasize the operative phrase there is "unreasonable pollution." All of us, to one degree or another, pollute the environment, the mere act of breathing constitutes pollution. This bill is intended, however, to bring judicial relief to bear only against those who unreasonably foul our environment. . . . We really bet it will be a major step forward in the fight against pollution and at the same time afford necessary protection against capricious lawsuits. . . .

House Transcript, Mar. 16, 1971, at 1207-08.

¹²¹ CONN. GEN. STAT. ANN. § 22a-17(a) (West 1985) states "the defendant may also prove, by way of an affirmative defense, that, considering all relevant surrounding circumstances and factors, there is no feasible and prudent alternative to the defendant's conduct."

¹²² CONN. GEN. STAT. ANN. § 22a-17(a) (West 1985).

¹²³ 401 U.S. 402, 411-13 (1971).

tives are those alternatives that are realistically and practically implementable as a matter of sound engineering.¹²⁴ Prudent alternatives are those alternatives that are economically reasonable in light of the social benefits derived from the activity.¹²⁵ In order to satisfy the feasible and prudent defense, the defendants must show that there is no other feasible or prudent alternative to their activity.¹²⁶ While a defendant may introduce the economic costs of the alternatives as evidence to show that the alternative to the defendant's pollution is not feasible, economic reasons cannot be the sole factor in determining whether or not there are feasible and prudent alternatives.¹²⁷

While a majority of defendants have chosen to submit evidence to rebut the plaintiff's prima facie case, the affirmative defense has been raised in three cases. In *Lake Williams*,¹²⁸ the Connecticut Supreme Court affirmed the trial court's decision allowing the defendants to lower the level of a lake to repair a dam.¹²⁹ While the court sympathized with the plaintiff's plight, the court agreed that there was no other feasible or prudent way to repair the failing dam except by lowering the water level.¹³⁰ The *Lake Williams* case demonstrates that the affirmative defense can be used to defeat a claim brought under CEPA.

Furthermore, in *Samperi v. Inland Wetlands Agency*, the plaintiff attempted to show that since there was a feasible and prudent alternative, a local wetlands commission should have denied the defendant's plan to reroute the natural drainage of about eight-tenths of an acre of wetlands.¹³¹ The Connecticut Supreme Court stated that so long as the administrative agency had substantial evidence in reaching their decision to allow the defendants' activities, the reviewing court will not overturn the agency's decision.¹³²

Defendants have not always been 100% successful in using the

¹²⁴ Volpe, 401 U.S. at 411; *Samperi v. Inland Wetlands Agency*, No. 14616, 1993 WL 279026, at *6 (Conn. July 27, 1993); *Manchester Env'tl. Coalition v. Stockton*, 441 A.2d 68, 76 (Conn. 1981) (Court determines that lack of a mass transit system in Connecticut prohibits the plaintiffs from showing that mass transit could be a feasible and prudent alternative to the defendants' activities).

¹²⁵ Volpe, 401 U.S. at 411; *Samperi*, 1993 WL 279026, at *6-*7; *Manchester Env'tl. Coalition*, 441 A.2d at 76.

¹²⁶ *Samperi*, 1993 WL 279026, at *6-*7.

¹²⁷ *Manchester Env'tl. Coalition*, 441 A.2d at 76.

¹²⁸ 496 A.2d 182 (Conn. 1985).

¹²⁹ 496 A.2d at 182.

¹³⁰ *Id.* at 185.

¹³¹ *Samperi v. Inland Wetlands Agency*, No. 14616, 1993 WL 279026, at *1 (Conn. July 27, 1993) (plaintiffs proposed the use of alternate road and culvert layouts to reduce the impact of the subdivision on the wetlands).

¹³² *Samperi*, 1993 WL 279026, at *7.

affirmative defense. In *Manchester Environmental Coalition*,¹³³ the defendant, accused of creating unnecessary pollution, alleged that there was no other feasible way that the several thousand employees could travel to the construction site except by their own cars, and therefore, there was no feasible or prudent alternative to driving to the site.¹³⁴ The Connecticut Supreme Court, however, did not accept the defendant's argument and remanded the case to determine whether no feasible or prudent alternatives to the defendant's activity existed.¹³⁵

D. Remedies Available under CEPA

CEPA allows the court to award declaratory and equitable relief to the plaintiff upon a finding of unreasonable pollution by the defendant.¹³⁶ The injunction may be permanent, or it may be temporary while the case is remanded to an administrative agency.¹³⁷

Very few citizen suits brought under CEPA have been victorious. *Keeney v. L. & S. Construction*¹³⁸ appears to be the only successful suit. Interestingly, the trial court in *Keeney* made a creative use of the injunction. The trial court first determined that the defendant, a private construction company, buried large amounts of hazardous waste and construction debris in five separate housing developments which polluted local wetlands and threatened the Housatonic River.¹³⁹ While the defendant disclaimed any knowledge of wrongdoing, the court found that the defendant buried the hazardous waste in defiance of environmental and hazardous waste laws.¹⁴⁰ In response to these activities, the trial court drafted a thirty-five point injunction order.¹⁴¹

¹³³ *Manchester Envntl. Coalition v. Stockton*, 441 A.2d 68, 75-76 (Conn. 1981).

¹³⁴ *Manchester Envntl. Coalition*, 441 A.2d at 76.

¹³⁵ *Id.*

¹³⁶ CONN. GEN. STAT. ANN. § 22a-18(a) (West 1985) states:

The court may grant temporary and permanent equitable relief, or may impose such conditions on the defendant as are required to protect the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction.

See also *Connecticut Water Co. v. Beausoliel*, 526 A.2d 1329, 1333 (Conn. 1987) (Connecticut courts have determined that there can only be declaratory and equitable relief under CEPA).

¹³⁷ CONN. GEN. STAT. ANN. § 22a-18(b) (West 1985) states:

If administrative, licensing or other such proceedings are required or available to determine the legality of the defendant's conduct, the court in its discretion may remand the parties to such proceedings.

¹³⁸ *Keeney v. L & S Constr.*, No. 91-702160, 1992 WL 4487, at *1 (Conn. Super. Jan. 6, 1992).

¹³⁹ *Keeney*, 1992 WL 4487, at *2-*3.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at *4.

The injunction set a strict schedule as to when and how the debris would be removed and required that the defendant make a visual inspection of the waste and record where and how the waste was disposed.¹⁴² The injunction also allowed the representatives of the plaintiff, the Commissioner of the Connecticut Department of Environmental Protection, to enter the property and monitor the work's progress.¹⁴³ Finally, any delay on the part of defendant could be punishable by a fine of \$300 to \$500 per day per site.¹⁴⁴

IV. THE MINNESOTA STATE COURTS' INTERPRETATION OF MERA

A. *Standing in a Private Suit Brought under MERA*

MERA and CEPA are functionally very similar in their construction as both acts are designed to give a broader grant of standing than the common law traditionally provided.¹⁴⁵ Plaintiffs who have brought suit under the Minnesota Environmental Rights Act, however, have not encountered many of the difficulties experienced by environmental plaintiffs in Connecticut. Although sections 22a-16 of CEPA and 116B.03 of MERA are nearly identical in their wording,¹⁴⁶ the Minnesota legislature added an exhaustive list of definitions, including a definition of the term "person."¹⁴⁷ These definitions have provided crucial guidance to the Minnesota courts and have led to a broad grant of standing to plaintiffs who bring suit under MERA.

In 1973, the Supreme Court of Minnesota was confronted with its

¹⁴² *Id.* at *5-*7.

¹⁴³ *Id.* at *7.

¹⁴⁴ *Id.*

¹⁴⁵ See *supra* notes 14-16, 37.

¹⁴⁶ Compare MINN. STAT. ANN. § 116B.03 (West 1987), which states:

Any person residing within the state; the attorney general; any political subdivision of the state; any instrumentality or agency of the state or of a political subdivision thereof; or any partnership, corporation, association, organization, or other entity having shareholders, members, partners or employees residing within the state may maintain a civil action in the district court for declaratory or equitable relief in the name of the state of Minnesota against any person, for the protection of the air, water, land, or other natural resources located within the state, whether publicly or privately owned from pollution, impairment or destruction. . . .

with CONN. GEN. STAT. ANN. § 22a-16 (West 1985); *supra* text accompanying note 38.

¹⁴⁷ MINN. STAT. ANN. § 116B.02 (West 1987) which states:

"Person" means any natural person, any state, municipality or other governmental or political subdivision or other public agency or instrumentality, any public or private corporation, any partnership, firm, association or other organization, any receiver, trustee, assignee, or agent or other legal representative of any of the foregoing, and any other entity, except a family farm, a family farm corporation or a bona fide farmer corporation.

first opportunity to rule on the issue of standing under MERA in a case which later proved to be the most serious challenge to MERA's broad grant of standing.¹⁴⁸ In *County of Freeborn by Tuveson v. Bryson*,¹⁴⁹ a farmer brought suit under MERA against the county of Freeborn to enjoin the construction of a road through swampland located on his property.¹⁵⁰ A Minnesota trial court dismissed the farmer's claim believing that the farmer was barred from asserting a claim under MERA because farmers were statutorily exempt from suits brought against them under MERA.¹⁵¹ Essentially, the trial court felt that it would be unjust to allow a person who could not be sued under MERA to sue under the statute.¹⁵² The trial court believed that it would be inequitable to allow the plaintiff to halt the county's construction project due to the environmental damage it would cause while the plaintiff farmer was free to destroy the swamp at will.¹⁵³ The Supreme Court of Minnesota reversed the trial court, holding that "any person" may sue or be sued under MERA.¹⁵⁴ The Supreme Court of Minnesota held that the trial court's narrow interpretation of standing under MERA was illogical because the state legislature clearly did not intend for a plaintiff to be barred from bringing suit under MERA merely because the plaintiff was engaged in the occupation of farming.¹⁵⁵

In 1977, the Supreme Court of Minnesota in *Minnesota Public Interest Research Group (MPIRG) v. White Bear Rod and Gun Club*,¹⁵⁶ reaffirmed its holding in *Freeborn* stating that the state legislature created the right of each person to bring suit under MERA to protect and to preserve the state's natural resources.¹⁵⁷ Later, in *People for Environmental Enlightenment and Responsibility v. Minnesota Environmental Quality Council*,¹⁵⁸ the Minnesota Supreme Court stated that there is a need for citizen vigilance to protect

¹⁴⁸ *County of Freeborn by Tuveson v. Bryson*, 210 N.W.2d 290 (Minn. 1973), *rev'd on other grounds*, 243 N.W.2d 316 (Minn. 1976) (plaintiff able to enjoin construction of county road that would destroy swamp lying within his property).

¹⁴⁹ 210 N.W.2d 290 (Minn. 1973).

¹⁵⁰ 210 N.W.2d at 294-95.

¹⁵¹ *Id.*

¹⁵² MINN. STAT. ANN. § 116B.03 (West 1987).

¹⁵³ *Freeborn*, 210 N.W.2d at 294.

¹⁵⁴ *Id.* at 295.

¹⁵⁵ *Id.* On rehearing, the Minnesota Supreme Court noted that Bryson had given the state a permanent conservation easement over his swamp. Court upheld the plaintiff farmer's right to bring suit under MERA. *County of Freeborn by Tuveson v. Bryson*, 243 N.W.2d 316, 319 (Minn. 1976).

¹⁵⁶ 257 N.W.2d 762 (Minn. 1977).

¹⁵⁷ 257 N.W.2d at 781.

¹⁵⁸ 266 N.W.2d 858 (Minn. 1978).

environmental resources, and that MERA recognizes the right of each citizen to bring a civil suit to protect those resources.¹⁵⁹

*B. The Plaintiff's Burden of Proof in a
Private Suit Brought under MERA*

A private plaintiff who brings suit under MERA establishes a prima facie case by proving two elements: the natural resource in question is protected under MERA and the defendant's actions will cause pollution, impairment, or destruction of this natural resource.¹⁶⁰

The first area to which the Minnesota courts look in determining whether the resource in question is protected under MERA is the language of the statute itself.¹⁶¹ The definitions of natural resources, again definitions which are not found in CEPA, provide an extensive list of what constitutes a protected natural resource under MERA.¹⁶²

In addition to the statutory definitions, the Minnesota courts have looked to trends in federal law to determine whether or not the resource in question may rise to the level of a protectable natural resource under MERA.¹⁶³ Using these guides, the Minnesota courts have held a considerable number of resources to be protectable natural resources under MERA including historical buildings,¹⁶⁴ the quietude and peacefulness of a lake,¹⁶⁵ and marsh or swampland.¹⁶⁶ Even the most exhaustive list of statutory definitions and a wide reading of MERA's goals, however, may not be enough to protect some resources if they appear to be beyond the scope of the statute.

In *Skeie v. Minnkota Power Cooperative, Inc.*,¹⁶⁷ the Supreme Court of Minnesota reached the same conclusion that the Connecticut Supreme Court reached in *Red Hill Coalition v. Town Planning and*

¹⁵⁹ 266 N.W.2d at 866.

¹⁶⁰ State, by Powderly v. Erickson, 285 N.W.2d 84, 87 (Minn. 1979); People for Env'tl. Enlightenment and Responsibility v. Minnesota Env'tl. Quality Council, 266 N.W.2d 858, 867 (Minn. 1978).

¹⁶¹ MINN. STAT. ANN. § 116B.02 (West 1987), states:

Natural resources shall include, but not be limited to, all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources. Scenic and aesthetic resources shall also be considered natural resources when owned by any governmental unit or agency.

¹⁶² § 116B.02.

¹⁶³ See Powderly, 285 N.W.2d at 87-88 (defining what constitutes historical resources under MERA).

¹⁶⁴ *Id.*; see also SST, Inc. v. City of Minneapolis, 288 N.W.2d 225, 229 (Minn. 1979) (historical and unique interior of building considered a natural resource under MERA).

¹⁶⁵ MPIRG v. White Bear Rod and Gun Club, 257 N.W.2d 762, 768 (Minn. 1977).

¹⁶⁶ Krmpotich v. City of Duluth, 483 N.W.2d 55, 57 (Minn. 1992); County of Freeborn by Tuveson v. Bryson, 243 N.W.2d 316, 318 (Minn. 1976).

¹⁶⁷ 281 N.W.2d 372 (Minn. 1979).

*Zoning Commission*¹⁶⁸—that farmland does not constitute a protectable natural resource.¹⁶⁹ The courts used similar logic to reach the same conclusion.¹⁷⁰ The Minnesota Supreme Court reasoned that protecting cultivated farmland would expand the reach of MERA beyond the legislative intent.¹⁷¹ Similarly, the Connecticut Supreme Court likewise stated that as farmland was not explicitly mentioned in the language of CEPA, the court should not expand the statute beyond the clear intent of the legislature.¹⁷²

In *Holte v. State*,¹⁷³ the Minnesota Court of Appeals held that MERA did not apply to chemical spraying initiated under Minnesota's Grasshopper Control Act.¹⁷⁴ Using similar reasoning to the Minnesota Supreme Court in *Skeie*¹⁷⁵ and the Connecticut Supreme Court in *Red Hill Coalition*,¹⁷⁶ the Appeals Court in *Holte* stated that because the legislature failed to explicitly include the Grasshopper Control Act in the language of MERA, the court could not extend MERA beyond the apparent legislative intent.¹⁷⁷

Once the plaintiff has shown that the resource in question is a protectable natural resource, the plaintiff must then prove that the defendant's activity will cause pollution, impairment, or destruction of that resource.¹⁷⁸ The Minnesota legislature provided its state courts with an extensive definition of "pollution, impairment or destruction."¹⁷⁹ Based upon these definitions, the Supreme Court of Minne-

¹⁶⁸ 563 A.2d 1347 (Conn. 1989).

¹⁶⁹ *Skeie*, 281 N.W.2d at 374; *Red Hill Coalition*, 563 A.2d at 1351-53.

¹⁷⁰ See *Red Hill Coalition*, 563 A.2d at 1351-53; *Skeie*, 281 N.W.2d at 374 (both courts are unwilling to extend their respective statutes beyond the legislatures' intent).

¹⁷¹ *Skeie*, 281 N.W.2d at 374.

¹⁷² *Red Hill Coalition*, 563 A.2d at 1351-53.

¹⁷³ 467 N.W.2d 346 (Minn. Ct. App. 1991).

¹⁷⁴ 467 N.W.2d at 348.

¹⁷⁵ *Skeie*, 281 N.W.2d at 372.

¹⁷⁶ *Red Hill Coalition*, 563 A.2d at 1347.

¹⁷⁷ *Id.*

¹⁷⁸ See, e.g., *State, by Powderly v. Erickson*, 285 N.W.2d 84, 87 (Minn. 1979); *People for Env'tl. Enlightenment and Responsibility v. Minnesota Env'tl. Quality Council*, 266 N.W.2d 858, 867 (Minn. 1978).

¹⁷⁹ MINN. STAT. ANN. § 116B.02 (West 1987), which states:

Pollution, impairment or destruction is any conduct by any person which violates, or is likely to violate, any environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit of the state or any instrumentality, agency, or political subdivision thereof which was issued prior to the date the alleged violation occurred or is likely to occur or any conduct which materially adversely affects or is likely to materially adversely affect the environment; provided that pollution, impairment or destruction shall not include conduct which violates, or is likely to violate, any such standard, limitation, rules, license, stipulation agreement or permit solely because of the introduction of an odor into the air.

sota has determined that an activity may be enjoined under MERA if the plaintiff either can show that there is a violation of any environmental quality standard or rule, or can prove that the conduct complained of will materially, adversely affect, or is likely to adversely affect, the environment.¹⁸⁰ The burden rests with the plaintiff to bring forward evidence to support this claim.¹⁸¹

In applying this test for sufficient harm to a resource, the Minnesota courts look to several factors. First, the court determines whether the resource in question is in danger of being completely destroyed.¹⁸² The court may also consider scientific or objective studies to support the plaintiff's contention.¹⁸³ Finally, the Minnesota courts will look to whether the resource in question is a virgin resource that is in danger of being interfered with or polluted.¹⁸⁴

Generally, the plaintiff in MERA has had considerable success in employing the statute to protect Minnesota's natural resources. This success rate, a success rate that the plaintiffs in Connecticut do not enjoy, is due to both the definitions provided within MERA and a willingness of the Minnesota courts to allow plaintiffs to use the statute to accomplish its intended goal.

C. Defenses Available in a Private Suit Brought under MERA.

Once a plaintiff has made out a prima facie case under MERA, the defendant may either rebut the plaintiff's case or plead an affirmative defense stating that there are no other feasible or prudent alternatives available.¹⁸⁵ The defenses available under MERA are very simi-

¹⁸⁰ MPIRG v. White Bear Rod and Gun Club, 257 N.W.2d 762, 768 (Minn. 1977).

¹⁸¹ MINN. STAT. ANN. § 116B.03 (West 1987).

¹⁸² See Krmpotich v. City of Duluth, 474 N.W.2d 392, 401 (Minn. Ct. App. 1991), *rev'd*, 483 N.W.2d 55 (Minn. 1992) (Minnesota Supreme Court enjoined construction of mall that would completely destroy marsh land); County of Freeborn by Tuveson v. Bryson, 243 N.W.2d 316, 318 (Minn. 1976) (Minnesota Supreme Court enjoined construction of county highway that would destroy marsh).

¹⁸³ MPIRG, 257 N.W.2d at 767-71 (plaintiff introduced evidence measuring level of noise pollution).

¹⁸⁴ People for Env'tl. Enlightenment and Responsibility v. Minnesota Env'tl. Quality Council, 266 N.W.2d 858, 867 (Minn. 1978).

¹⁸⁵ MINN. STAT. ANN. § 116B.04 (West 1987) states:

In any other action maintained under section 116B.03, whenever the plaintiff shall have made a prima facie showing that the conduct of the defendant has, or is likely to cause the pollution, impairment or destruction of the air, water, land or other natural resources located within the state, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative and the conduct at issue is consistent with and reasonably required for the promotion of the

lar to those available under CEPA insofar as both statutes allow defendants to rebut the plaintiff's case or to plead an affirmative defense.¹⁸⁶ MERA, however, contains an additional statement reminding the courts of the state's paramount concern for the protection of its natural resources.¹⁸⁷ Given that the protection of the state's natural resources is of paramount importance, the courts will usually enjoin the polluting activity, except in extremely unusual circumstances.¹⁸⁸

Any attempt to plead an affirmative defense will meet with considerable skepticism, especially if the defense is couched solely in economic terms.¹⁸⁹ For example, the Minnesota Supreme Court in *County of Freeborn by Tuveson v. Bryson*,¹⁹⁰ refused to accept the defendant's assertion that there was no feasible and prudent alternative to the current plan of construction of a county highway that required the highway to bisect a swamp.¹⁹¹ The court determined that the highway should avoid the marshlands entirely, even if it meant a substantially increased cost of construction to the county.¹⁹² Similarly, in *State by Powderly v. Erickson*,¹⁹³ and *Archabel v. County of Hennepin*,¹⁹⁴ the Minnesota Supreme Court enjoined the demolition of historical buildings even after hearing evidence that they were heavily vandalized.¹⁹⁵ The court determined that a feasible, albeit expensive, alternative existed in the renovation of these buildings.¹⁹⁶ Finally, in *People for Environmental Enlightenment and Responsibility v. Minnesota Environmental Quality Council*,¹⁹⁷ the Minnesota Supreme Court determined that the most feasible and prudent method of constructing

public health, safety, and welfare, in light of the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not constitute a defense hereunder.

¹⁸⁶ CONN. GEN. STAT. § 22a-17(a) (West 1985); MINN. STAT. ANN. § 116B.04 (West 1987).

¹⁸⁷ MINN. STAT. ANN. § 116B.04 (West 1987).

¹⁸⁸ *State, by Powderly v. Erickson*, 285 N.W.2d 84, 88 (Minn. 1979).

¹⁸⁹ *Archabel v. County of Hennepin*, 495 N.W.2d 416, 423 (Minn. 1993) (defendants must meet an extremely high burden of proof when pleading the affirmative defense); *County of Freeborn by Tuveson v. Bryson*, 243 N.W.2d 316, 321 (Minn. 1976). Court applies the reasoning used in *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 411 (1971) and stated that economic considerations alone can not be the sole determiner of what is feasible and prudent. *Freeborn*, 243 N.W.2d at 321. Barring unusual circumstances, paramount consideration must be given to the protection of natural resources from damage or destruction. *Id.* at 320-21.

¹⁹⁰ *Id.* at 316.

¹⁹¹ *Id.* at 322.

¹⁹² *Id.*

¹⁹³ 285 N.W.2d 84 (Minn. 1979).

¹⁹⁴ 495 N.W.2d 416 (Minn. 1993).

¹⁹⁵ *Archabel*, 495 N.W.2d at 419-20; *Powderly*, 285 N.W.2d at 89.

¹⁹⁶ *Archabel*, 495 N.W.2d at 425 (court determines that the economic and social difficulties that would result if the community could not demolish the historical building did not satisfy the burden of proof for the affirmative defense under MERA); *Powderly*, 285 N.W.2d at 89.

¹⁹⁷ 266 N.W.2d 858 (Minn. 1978).

power lines was to use pre-existing power line routes rather than constructing new routes.¹⁹⁸

D. Remedies Available under MERA

Plaintiffs who are successful in their suits under MERA are entitled to either declaratory relief, or temporary or permanent equitable relief.¹⁹⁹ The vast majority of successful cases brought under MERA have resulted in injunctive relief.²⁰⁰ On at least one occasion, the Minnesota Supreme Court has instructed the trial court to reconsider a case in order to determine whether there are more feasible or prudent alternatives to the defendant's proposed action.²⁰¹

On another occasion, the Minnesota Court of Appeals conditioned temporary equitable relief upon the payment of a bond in security.²⁰² In *Drabik v. Martz*,²⁰³ the plaintiff brought suit under MERA against an individual who wished to construct a radio tower on a piece of private land that abutted a state forest.²⁰⁴ The plaintiff attempted to enjoin construction claiming that not only would the tower spoil the view and the public's wilderness experience while visiting the park, but it would pose a risk for birds and endanger the land surrounding the tower.²⁰⁵

Drabik is significant for several reasons. *Drabik* was the first case in which a plaintiff attempted to use MERA to halt a private person from constructing a tower on private land because it marred the view from a piece of public land.²⁰⁶ *Drabik* is also unique because it is apparently the only case where a Minnesota court ordered the plaintiff to pay a bond before temporary relief was granted.²⁰⁷ Finally, in *Drabik* the Minnesota Court of Appeals approved the trial court's use

¹⁹⁸ People for Env'tl. Enlightenment and Responsibility, 266 N.W.2d at 868.

¹⁹⁹ MINN. STAT. ANN. § 116B.07 (West 1987) states:

The court may grant declaratory relief, temporary and permanent equitable relief, or may impose such conditions upon a party as are necessary or appropriate to protect the air, water, land or other natural resources located within the state from pollution, impairment, or destruction. When the court grants temporary equitable relief, it may require the plaintiff to post a bond sufficient to indemnify the defendant for damages suffered because of the temporary relief, if permanent relief is not granted.

²⁰⁰ Krmpotich v. City of Duluth, 474 N.W.2d 392, 400-01 (Minn. 1991); MPIRG v. White Bear Rod and Gun Club, 257 N.W.2d 762, 783 (Minn. 1977); County of Freeborn by Tuveson v. Bryson, 243 N.W.2d 316, 321-22 (Minn. 1976).

²⁰¹ People for Env'tl. Enlightenment and Responsibility, 266 N.W.2d at 874.

²⁰² Drabik v. Martz, 451 N.W.2d 893, 897 (Minn. Ct. App. 1990).

²⁰³ 451 N.W.2d 898 (Minn. Ct. App. 1990).

²⁰⁴ Drabik, 451 N.W.2d at 894-95.

²⁰⁵ *Id.* at 896-97.

²⁰⁶ *Scenic and Aesthetic Resources*, *supra* note 14, at 1205.

²⁰⁷ Drabik, 451 N.W.2d at 897.

of an unusual five-part balancing test to determine whether a temporary injunction should be granted rather than following the more exacting strictures for enjoining pollution that were laid out in *Powderly*.²⁰⁸ Interestingly, the Minnesota Court of Appeals gives no reason for this decision other than stating that the decision was within the trial court's discretion.²⁰⁹

V. ANALYSIS OF THE EFFECTIVENESS OF CEPA AND MERA

The Connecticut Environmental Protection Act of 1971 and the Minnesota Environmental Rights Act are remarkably similar in many respects. First, both acts are based upon the same Model Act and are thus very similar in draftsmanship.²¹⁰ More importantly, however, both acts are intended to give a greater role to the private plaintiff in protecting its state's natural resources from pollution or impairment.²¹¹ In accomplishing this end, both acts give a statutory grant of standing to these private plaintiffs, eliminating the need for plaintiffs to show direct or personal injury from the defendant's activity.²¹²

Despite their similarities and goals, the effectiveness of these two acts has varied considerably. Plaintiffs who have brought suit under CEPA have found the Act nearly impossible to use as an effective cause of action.²¹³ Indeed, for the first ten years of CEPA's history, private plaintiffs found themselves blocked on the single issue that CEPA was designed to eliminate, the issue of standing.²¹⁴ After 1981, when private suits brought under CEPA survived in court long enough to be judged on their merits, private plaintiffs still found the courts unwilling to enjoin pollution unless it had reached an almost flagrant level.²¹⁵

Conversely, private plaintiffs in Minnesota have had an easier time in court.²¹⁶ The Minnesota courts were quick to grant standing to private plaintiffs regardless of whether they could show a direct or personal injury from the defendants' activity.²¹⁷ The vast majority of

²⁰⁸ *State, by Powderly v. Erickson*, 285 N.W.2d 84, 88 (Minn. 1979).

²⁰⁹ *Drabik*, 451 N.W.2d at 897.

²¹⁰ See *SAX*, *supra* note 3 and accompanying text.

²¹¹ CONN. GEN. STAT. ANN. § 22a-16 (West 1985); MINN. STAT. ANN. § 116B.03 (West 1987). *Supra* text accompanying notes 38, 146.

²¹² See *supra* notes 14-26 and accompanying text.

²¹³ See *supra* notes 80-135 and accompanying text.

²¹⁴ See *supra* notes 42-68.

²¹⁵ *Keeny v. L & S Constr.*, No. 91-702160, 1992 WL 101043, at *1-*3 (Conn. Super. Jan. 6, 1992).

²¹⁶ See *supra* notes 147-98 and accompanying text.

²¹⁷ See *supra* notes 146-59 and accompanying text.

cases brought under MERA have been successful because defendants have been hard pressed to either rebut a prima facie case showing that the challenged activity would pollute or impair the natural resources, or to successfully plead the affirmative defense.²¹⁸

One of the critical differences between the two statutes is the presence of the term "unreasonable" in CEPA.²¹⁹ The term "unreasonable" in section 22a-16 of CEPA requires a plaintiff to show more than mere pollution of the natural resources, as allowed under MERA.²²⁰ The Connecticut legislature added the term "unreasonable" to discourage harassment suits.²²¹ This one word has proven to be one of the most difficult burdens that Connecticut plaintiffs must clear.²²² It should be noted that the Connecticut Supreme Court in *Manchester Environmental Coalition*,²²³ when it cited *Freeborn*²²⁴ as the basis for its test of unreasonable pollution, failed to realize that the *Freeborn* test specifically left out the term "unreasonable."²²⁵ This oversight prompted some commentators to suggest that this heralded a much easier test for plaintiffs under CEPA.²²⁶

A showing of unreasonable pollution still requires strong, objective evidence or scientific studies and tests.²²⁷ Mere speculation is not acceptable for a Connecticut court.²²⁸ The term unreasonable also provides for substantial judicial leeway and invites judges to use a subjective, and invariably more conservative interpretation of the plaintiff's case.²²⁹

Another major reason for the remarkable difference in effectiveness of the two acts lies in the details of the two statutes. First, the Minnesota legislature attached eight definitions for key terms found within the statute.²³⁰ The section further defines the terms of who a "person" is, what a "natural resource" is, and what "pollution, impair-

²¹⁸ See, e.g., *County of Freeborn by Tuveson v. Bryson*, 243 N.W.2d 315 (Minn. 1976); *State, by Powderly v. Erickson*, 285 N.W.2d 84 (Minn. 1979); *Archabel v. County of Hennepin*, 496 N.W.2d 416 (Minn. 1993).

²¹⁹ CONN. GEN. STAT. ANN. § 22a-16 (West 1985).

²²⁰ Compare, *Lake Willams Beach Assoc. v. Gillman Bros.*, 496 A.2d 182, 185-86 (Conn. 1985), with *MPIRG v. White Bear Rod and Gun Club*, 257 N.W.2d 762, 780-81 (Minn. 1977).

²²¹ See Environmental Committee Transcript, *supra* note 119 and accompanying text.

²²² See *supra* notes 99-109 and accompanying text.

²²³ 441 A.2d 68 (Conn. 1981).

²²⁴ 210 N.W.2d 290 (Minn. 1973).

²²⁵ *Freeborn*, 210 N.W.2d at 297.

²²⁶ Note, *supra* note 46, at 712.

²²⁷ See *supra* notes 107-112 and accompanying text.

²²⁸ See *supra* note 112 and accompanying text.

²²⁹ See *supra* notes 107-12 and accompanying text.

²³⁰ MINN. STAT. ANN. § 116B.02 (West 1987).

ment or destruction" is for the purposes of MERA.²³¹ These terms have proven invaluable in several key instances. By defining what a person is, the Minnesota legislature ensured that the courts would never be in doubt as to who could bring suit under MERA.²³² The Minnesota Supreme Court in *Freeborn*, considering the first case in which a plaintiff's standing was challenged, relied heavily upon this legislative guidance when it made its final decision to grant standing to the plaintiff.²³³

Second, the Minnesota courts have used the definition of natural resource to extend the statutory protection of MERA to a host of state resources. The Minnesota courts have protected resources as varied as scenic and aesthetic views in state forests, the quietude of a lake, and the historical value of abandoned row houses.²³⁴ Conversely, the Connecticut Supreme Court declined to expand upon the statutory definition of natural resource, in effect stating that CEPA is limited to protecting air and water.²³⁵ The Connecticut Supreme Court explicitly stated in *Red Hill Coalition*²³⁶ that it would not engraft additional protectable resources to CEPA.²³⁷

The *Red Hill Coalition* case provides an interesting contrast between the two acts. In *Red Hill Coalition*, the Connecticut Supreme Court denied CEPA's protection to farmland²³⁸ mirroring the decision reached by the Minnesota Supreme Court in *Skeie*.²³⁹ However, while the decisions and the reasoning behind the cases are similar, they further illustrate the differences between the two acts. The Minnesota Supreme Court determined that farmland was not a natural resource because it was land in use, not land in its natural state.²⁴⁰ In contrast, the Connecticut Supreme Court determined that because farmland in particular, and land in general, was not part of the language of CEPA, the court should interpret this omission as a deliberate limitation on the part of the legislature on the reach of CEPA.²⁴¹ The Minnesota Supreme Court's reasoning appears to be a misreading

²³¹ § 116B.02.

²³² See *supra* notes 152–55 and accompanying text.

²³³ *County of Freeborn by Tuveson v. Bryson*, 210 N.W.2d 290, 294–95 (Minn. 1973), *rev'd on other grounds*, 243 N.W.2d 316 (Minn. 1976).

²³⁴ See *supra* notes 164–66 and accompanying text.

²³⁵ See *supra* notes 86–96 and accompanying text.

²³⁶ 563 A.2d 1347 (Conn. 1989).

²³⁷ *Red Hill Coalition*, 563 A.2d at 1351–53.

²³⁸ *Id.*

²³⁹ 281 N.W.2d 372, 374 (Minn. 1979).

²⁴⁰ *Skeie*, 281 N.W.2d at 374.

²⁴¹ See *supra* notes 91–96 and accompanying text.

of the statutory definitions, while Connecticut's reasoning appears to be a more serious misreading of the statutory purpose.

A final critical difference between the two statutes is that the defendant has a far greater chance of successfully pleading the affirmative defense under CEPA than under MERA.²⁴² Although both states' courts have relied upon the language found in *Overton Park*²⁴³, MERA instructs the court to remember the state's paramount goal to protect its natural resources.²⁴⁴ Accordingly, Minnesota courts are to look upon the affirmative defense with considerable skepticism and, barring extremely strange circumstances, to enjoin polluting activity.²⁴⁵ In contrast, CEPA lacks this admonishment and the Connecticut courts have thus allowed defendants to plead the affirmative defense successfully. This arguably allows the defendants to simply pollute or to continue polluting the state's natural resources.²⁴⁶

VI. CONCLUSION

The Connecticut Environmental Protection Act and the Minnesota Environmental Rights Act are milestones in the field of environmental law. These statutes are tools for direct citizen action to protect a state's natural resources from pollution or destruction. These statutes, however, are the victims both of the legislatures who write them and the courts who interpret them. If the statutes are drafted poorly, providing little guidance for the courts, or if the courts continue to cling to traditional common law interpretations of standing and burdens of proof, then the value of these statutes will be considerably diminished.

²⁴² Compare *Lake Williams Beach Assoc. v. Gilman Bros.*, 496 A.2d 182, 185-86 (Conn. 1985) with, *State, by Powderly v. Erickson*, 285 N.W.2d 84, 88-89 (Minn. 1979); *Archabel v. County of Hennepin*, 495 N.W.2d 416, 421-25 (Minn. 1993).

²⁴³ 401 U.S. 402 (1971).

²⁴⁴ MINN. STAT. ANN. § 116B.04 (West 1987).

²⁴⁵ See *People for Env'tl. Enlightenment and Responsibility v. Minnesota Env'tl. Quality Council*, 266 N.W.2d 858, 868 (Minn. 1978).

²⁴⁶ See *supra* notes 128-35 and accompanying text.